IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2611 To 2613 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORP.

Versus

HASINABEN WD/O IBRAHIM KALU ANAR

Appearance:

MS ROOPAL R PATEL for Petitioner No. 1

MR KK NAIR for Respondent No. 8

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 16/08/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This Bench had earlier issued notice for settlement, and the notice was issued only to the respondent-Insurance Company. However, a settlement was not possible.

2. Heard the learned counsel for the respective parties. Appeals admitted. Mr. K.K. Nair appears and waives service of notice in the appeals on behalf of the respondent Insurance Company.

3. On a joint request of learned counsel for the appellant and the Insurance Company, these appeals are taken up for final hearing today.

4. The only contention raised on behalf of the appellant Gujarat State Road Transport Corporation, as the owner of the bus involved in the accident, is as regards the finding that the driver of the bus involved in the accident was contributory to the accident to the extent of 70%. The respondent-Insurance Company in the present appeals was the insurer of the other vehicle viz. the rickshaw which was involved in the accident with the bus in question.

5. We have heard the learned counsel for the respective parties on the question of the contributory negligence attributable to each of the drivers of the two vehicles involved. In this context we have also carefully perused the impugned judgement and award passed by the Motor Accident Claims Tribunal, and have also referred to such evidentiary material on record to which our attention has been drawn. As a result of this exercise the learned counsel for the respective parties have requested us to consider the question of apportionment of liability on the basis of their respective submissions, without the necessity of giving reasons for the same.

6. Accordingly we have applied our mind to the facts and circumstances of the case, and the evidentiary material on record.

7. We accordingly find that the interest of justice will be served by observing and holding that the driver of the S.T,. bus was contributory to the accident to the extent of 60% and that the driver of the rickshaw was contributory to the extent of 40%. Thus, the liability to meet the award passed in favour of the original claimants will be shared as between the appellant and the

respondent-Insurance Company in the proportion of 60% and 40%. The impugned award is modified only to the aforesaid extent.

8. These appeals are, therefore, partly allowed with no order as to costs. Decree accordingly.

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